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FEDERAL COMMUNICATIONS COMMISSION  
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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Petition of the Connecticut Department of Public Utility )  
Control for Delegation of Additional Authority ) CC Docket No. 96-98  
to Implement Number Conservation Measures ) File No. NSD-L-99-62

COMMENTS OF  
LEVEL 3 COMMUNICATIONS, INC.

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Level 3 Communications, Inc. ("Level 3"), by undersigned counsel and pursuant to the Common Carrier Bureau's August 5, 1999 Public Notice,<sup>1</sup> hereby submits its Comments in the above-captioned proceeding.

I. INTRODUCTION

Level 3 is a communications and information services company that is building an advanced Internet Protocol technology-based network across the United States, connecting 25 cities. Level 3 will deploy its network in phases by 2001. The company also plans to build local networks in cities across the country and to interconnect those networks with its national long distance network. As a facilities-based provider of local services, Level 3 is dependent upon adequate access to numbering resources to serve customers and expand the geographic scope of its operations.

Level 3 welcomes the initiative on the part of the Connecticut Department of Public Utility Control ("CTDPUC") in attempting to address the problems associated with NXX code shortages. Indeed, Level 3's inability to obtain NXX codes and telephone numbers is one of the most significant, artificial barriers to competitive entry and expansion. Level 3 agrees that

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<sup>1</sup> See *Common Carrier Bureau Seeks Comment on the Connecticut Department of Public Utility Control's Petition for Delegation of Additional Authority to Implement Area Code Conservation Measures*, NSD File No. L-99-62, DA 99-1555, Public Notice (rel. August 5, 1999) [hereinafter CTDPUC Petition].

several of the measures proposed by the CTDPUC could in fact remedy the number allocation problems currently facing several Numbering Plan Areas (“NPAs”).

There are several other respects, however, in which Level 3 believes that the CTDPUC’s approach to the NXX code shortages is inappropriate. Rather than looking to novel measures as a panacea for code exhaust, the CTDPUC should use more tested and reliable means of increasing access to telephone numbers. There is no guarantee that these alternative conservation measures – such as number pooling– will work, and it would be inefficient and burdensome for carriers to comply with what may become up to 50 separate number consolidation mechanisms. Level 3 believes that only after effective uniform federal solutions to these alternative conservation measures have been developed and tested should the states be encouraged to implement them. Indeed, the Commission is in the midst of a comment phase regarding the development of a national numbering administration framework.<sup>2</sup> The Commission should not presuppose or undermine the development of this national framework by giving the states piecemeal authority to develop independent numbering policies.

## **II. THE PETITION PROPOSES A NUMBER OF MEASURES THAT THE CTDPUC COULD EFFECTIVELY UTILIZE TO ADDRESS NXX CODE EXHAUST.**

Level 3 supports the following number conservation measures for which the CTDPUC seeks delegated implementation authority from the Commission.

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<sup>2</sup> See *In the Matter of Numbering Resource Optimization Connecticut Department of Public Utility Control Petition for Rulemaking to Amend the Commission’s Rule Prohibiting Technology-Specific Area Code Overlays*, CC Docket 99-200, RM No. 9258, Notice of Proposed Rulemaking (rel. June 2, 1999) (“*Numbering NPRM*”).

### **A. NXX Code Reclamation**

Allowing the CTDPUc to reclaim unused NXX codes from carriers could provide a reasonable means of making more efficient use of numbering resources.<sup>3</sup> While Level 3 believes that this is a technically feasible solution, some questions remain relating to the scope and timing of such reclamation. First, it is not at all clear how the CTDPUc would implement a reclamation process. In fact, the CTDPUc's request devotes only a single paragraph to its request for such expanded authority. If the CTDPUc is to be given expanded authority, it certainly should first be made to explain in greater detail the kind of authority sought, or what it plans to do with that authority. In other words, the Commission should not grant the CTDPUc unbridled authority to exercise in reclaiming NXX codes.

Notwithstanding the lack of detail in the CTDPUc Petition, it might be possible to construct a limited delegation of authority to the CTDPUc for the purposes of reclaiming unused NXX codes from carriers. For example, it is essential that carriers not be forced to return NXX codes prematurely if their business plans call for the use of those codes in the foreseeable future. Many competitive local exchange carriers ("CLECs") place orders for NXX codes months in advance of entering a rate center in order to ensure that the numbering resources will be readily available once customer sales begin. CLECs may also decide to assign telephone numbers to a customer months in advance of serving that customer as part of their marketing efforts and business plans.

The Commission should help ensure the competitive neutrality of any rules the CTDPUc may adopt. If the CTDPUc is given authority to reclaim unused NXX codes, appropriate safeguards must be in place so that the state or numbering administrator is not given an inordinate amount of power over carriers' business plans. Among other things, the Commission may want to direct that the CTDPUc may only take action to reclaim an unused NXX code if the

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<sup>3</sup> See CTDPUc Petition, at 7.

carrier has held the code for more than one year.<sup>4</sup> The Commission should make clear that any delegation of authority to the CTDPUC with respect to reclamation of NXX codes only applies to those codes that are truly unused, and not to any codes that are simply determined by the state regulator to be somehow “unneeded” on a subjective basis.

## **B. Audit the Use of Numbering**

Level 3 could support the CTDPUC’s request for authority to engage in the auditing of number assignment and utilization requirements.<sup>5</sup> If this will simply be an information tool, if appropriate nondisclosure protections are in place, and if the forecasts are part of the auditing process such forecasts are not treated as binding, it may very well be useful for the CTDPUC to have access to such information in identifying and planning for area code exhaust. However, if this information would be made available to the public, or if it were used to prevent carriers from obtaining subsequent NXX codes (either because the forecasts are binding or because the CTDPUC plans to establish a utilization threshold for future NXX codes), then Level 3 strongly opposes allowing the CTDPUC to collect such information.

For example, in its Petition to this Commission for expanded number administration authority, the New York Public Service Commission (through the Department of Public Service) proposed that it be given the power to limit a carrier’s ability to request new NXX codes if that carrier already holds other NXX codes with low utilization rates.<sup>6</sup> The delegation of such

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<sup>4</sup> Level 3 recognizes that current industry numbering guidelines direct carriers to return NXX codes to the numbering administrator if a code is no longer needed or is not activated within six months. However, in some cases customer requirements may cause a carrier to delay activation until several more months have passed. In light of the uncertainty of customer demand at times and the voluntary nature of the NXX code return policy set forth in the numbering guidelines, the CTDPUC should not be allowed to take any enforcement action to reclaim an inactive code until at least one year has passed.

<sup>5</sup> See CTDPUC Petition, at 7. Again, this is an instance in which the CTDPUC has devoted only a single paragraph to describing its request for delegated authority.

<sup>6</sup> See *Common Carrier Bureau Seeks Comment on New York Department of Public Service Petition for Additional Authority to Implement Number Conservation Measures*, NSD File No. L-99-21, Petition of the New York Department of Public Service, at 12.

numbering authority would generally be harmful because using utilization and forecast surveys to limit access to subsequent NXX codes would artificially limit the geographic scope of carriers' operations. If a carrier is denied the ability to obtain a NXX code to serve a second rate center simply because it was unable to attract enough customers in its first rate center, this creates an unjustified, and possibly unlawful, artificial barrier to entry. Such measures would invite unwarranted regulatory interference with carrier business plans. Level 3 therefore urges the Commission to make sure that if the CTDPU is given the authority to conduct utilization and forecast surveys, it is made clear that the CTDPU may not use this information to deny a carrier NXX codes in the future, nor keep the information in any file available for public examination.

**III. STATES SHOULD NOT BE PERMITTED TO UTILIZE THE UNTESTED METHOD OF MANDATORY THOUSAND BLOCK NUMBER POOLING SINCE IT IS SUBJECT TO FURTHER DISCUSSION, DEVELOPMENT, AND STANDARDIZATION.**

Although Level 3 supports several aspects of the CTDPU's Petition as discussed above, Level 3 believes the Petition should be denied in part because it is too vague in nature and would undermine national efforts to develop uniform number administration procedures.

The CTDPU proposes to implement a mandatory thousands block pooling regime.<sup>7</sup> While Level 3 agrees that thousands block number pooling may prove useful in the future in making more efficient use of telephone numbers, there are many technical, procedural, and competitive hurdles that must be resolved before pooling can be considered a viable number optimization solution. For example, the NANC Report sets forth an "Implementation Timeline" which indicates that there are several pooling administration steps, system modifications, and cost recovery decisions that are not yet finalized.<sup>8</sup> The NANC Report indicates that it will take

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<sup>7</sup> See CTDPU Petition, at 6.

<sup>8</sup> Number Resource Optimization Working Group, *Modified Report to the North American Numbering Council on Number Optimization Methods* (Oct. 20, 1998) ("NANC Report") at §5.3.

between 10 and 19 months to implement pooling following a regulatory order.<sup>9</sup> Moreover, the conclusions set forth in the NANC Report – such as the establishment of a 10% block contamination threshold or the block assignment guidelines – are being considered in an open proceeding in which the Commission is just now receiving and reviewing comments.<sup>10</sup> The Commission should not allow pooling to be implemented where acceptable, appropriate pooling standards are still in such an experimental and developmental stage. Nor should it prejudice the outcome of its own numbering administration rulemaking by awarding pooling authority to the CTDPUC in the interim.<sup>11</sup>

The competitive implications of mandatory pooling on carriers that are not yet required to implement Local Number Portability merit careful consideration and resolution before states are given the authority to compel participation in a pooling program. In addition, the CTDPUC has not addressed how it will minimize the potential damage to competition that may result from these proposals.<sup>12</sup> For example, simply forcing carriers with only one or two NXX codes to pool those codes will have a significant impact on the cost structure of local exchange services. This would upset established business plans and may force carriers to withdraw from some markets altogether. The Commission should therefore ensure that operationally sound and competitively neutral pooling guidelines are finalized before the states are given authority to compel

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<sup>9</sup> See *Numbering NPRM*, at ¶ 159 (citing NANC Report at §5.3.3).

<sup>10</sup> See *Numbering NPRM*, at ¶¶ 187-192.

<sup>11</sup> It is unclear why the CTDPUC needs additional authority at this time. The CTDPUC has already ordered an overlay in both the 860 and 203 area codes. See *DPUC Review of Management of Telephone Numbering Resources in Connecticut – Reopening*, Docket No. 96-11-10, August 17, 1999, at 1. Moreover, it appears the CTDPUC Petition is styled to seek relief only for new area codes that have not yet been implemented. See CTDPUC Petition, at 5. Why interim relief is needed when such relief would only affect new area codes before the FCC conclusively settles these issues on a national level is entirely unclear.

<sup>12</sup> In fact, the CTDPUC has not provided any details associated with its potential pooling plans. See CTDPUC Petition, at 6.

participation in pooling mechanisms.<sup>13</sup> Similarly, there must be some equitable method of recovering the costs associated with pooling participation. Furthermore, to be competitively neutral, rules should permit carriers to retain a minimum number of NXX codes that they do not have to pool. However, above all else, any mandatory pooling mechanism must first be demonstrated to be technically feasible and operationally sound, so that carriers are able to obtain and retain numbers without fear that the numbers they contribute to a pooling mechanism are effectively lost forever.

The prospect of 50 state governments erecting different pooling mechanisms presents a substantial technical and administrative burden for carriers. Given the vast disparity in resources among carriers, these burdens could prove to have a significant impact on the ability of smaller carriers to compete on a national basis. Level 3 therefore respectfully requests that the Commission decline to award the CTDPU (or any other state commission) the authority to implement a mandatory pooling mechanism until: (i) comprehensive, procompetitive, uniform federal pooling guidelines have been finalized and implemented; (ii) pooling has been demonstrated to work in terms of providing carriers with access to thousands number blocks as needed; and (iii) carriers are ensured that they will be able to recover the costs associated with implementing a pooling mechanism.

#### **IV. CONCLUSION**

Level 3 commends the CTDPU for taking a proactive approach to resolving the problems of NXX code exhaust. Several of the proposals set forth by the CTDPU may ultimately assist in making much more efficient use of existing number resources. However, the problem with some of these proposals comes in their vague nature, their timing, and their method of implementation. Even if one looks beyond the CTDPU's failure to explain adequately the

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<sup>13</sup> Level 3 recognizes that pooling guidelines were issued by the Industry Numbering Committee in January 1999. These guidelines do not, however, resolve conclusively the matters still open for consideration before this Commission in the context of the NANC Report and the *Numbering NPRM*.



scope of authority sought from the Commission, certain of the CTDPU's proposed measures are simply not ready for deployment in the market and the testing and implementation of these measures needs to be part of a coordinated national effort in order to best promote their competitive neutrality. In this instance, allowing the states to experiment with number pooling and related measures would only lead to inconsistency as each state, in isolation, attempts to resolve the technical, administrative, and competitive concerns. The Commission should therefore grant the CTDPU a limited delegation of authority consistent with the recommendations set forth herein, but it should otherwise proceed within the context of its own number optimization docket to establish national guidelines.

Respectfully submitted,



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